

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS

LATRINA R. JONES,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-1139-WEB
)	
MICHAEL J. ASTRUE,)	
Commissioner of)	
Social Security,)	
)	
Defendant.)	

ORDER

This is an action reviewing the final decision of the Commissioner of Social Security denying the plaintiff supplemental security income payments. The matter was referred to Magistrate Judge Bostwick for a recommendation and report pursuant to Rule 72(b), Federal Rules of Civil Procedure. The Recommendation and Report was filed on March 23, 2009. Neither party has filed objections to the Recommendation and Report.

I. History

On August 9, 2007, the administrative law judge (ALJ) issued his decision. The ALJ found that the plaintiff did not meet or equal a listed impairment, she was capable of performing past relevant work, or she is able to perform other jobs in the national economy. The ALJ concluded the plaintiff was not disabled.

Magistrate Judge Bostwick found that the ALJ erred in his analysis of the plaintiff's mental impairments and the weight given to the plaintiff's treating psychologist. The magistrate judge recommended that the decision of the Commissioner be reversed and remanded.

II. Standard of Review

The district court reviews the magistrate's report under a de novo standard of review. Fed.R.Civ.P. Rule 72(b), 28 U.S.C. § 636(b)(1). The court has considerable discretion in choosing what reliance to place on the magistrate's findings and recommendations. The district court can follow or ignore the magistrate's recommendation, but it should make an independent determination of the issues. *Andrews v. Deland*, 943 F.2d 1162, 1170 (10th Cir. 1991). A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. 636(b)(1).

We review the Commissioner's decision to determine whether the factual findings are supported by substantial evidence in the record and whether the correct legal standards were applied. *Hackett v. Barnhart*, 395 F.3d 1168, 1172 (10th Cir. 2005). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* It requires more than a scintilla, but less than a preponderance. *Zoltanski v. F.A.A.*, 372 F.3d 1195, 1200 (10th Cir. 2004).

III. Discussion

Magistrate Judge Bostwick found the ALJ erred in his analysis of plaintiff's mental impairments and the weight accorded to plaintiff's treating psychologist. The court found the ALJ failed to cite to any finding that disputed the opinions of the treating physician. The magistrate judge found that on remand, the ALJ should make new findings in the sequential evaluation process, including new credibility and RFC findings.

A treating physician's opinion should be given controlling weight if well supported and not inconsistent with other substantial evidence in the record. *Castellano v. Secretary of Health*

& Human Services, 26 F.3d 1027, 1029 (10th Cir. 1994); 20 C.F.R. § § 404.1527(d)(2), 416.927(d)(2). The ALJ must specify in the opinion what weight he is giving the treating physician opinion. *Robinson v. Barnhart*, 366 F.3d 1078, 1083 (10th Cir. 2004). The ALJ did not give controlling weight to the treating physician opinion, and did not cite to the evidence that he relied on to support his opinion. On remand, the ALJ should follow the recommendations of the magistrate judge and consider the treating physician's opinion, make new findings in the sequential evaluation process, and make new findings regarding credibility and RFC findings.

IV. Conclusion

The decision of the Commissioner is reversed and remanded.

IT IS ORDERED that the Recommendation and Report of Magistrate Judge Bostwick (Doc. 14) be adopted by this Court; and

IT IS FURTHER ORDERED that the decision of the Commissioner be REVERSED, and this case be remanded (sentence four remand) to the Commissioner, with directions to conduct further proceedings in accordance with the standards set out in the Report.

SO ORDERED this 14th day of May, 2009.

____ s /Wesley E. Brown
Wesley E. Brown
U.S. Senior District Judge